

REMARKS/ARGUMENTS

Status of Claims

Claims 1-13 were originally filed in the present application. These claims were previously subjected to a restriction requirement. Claims 10-13 have been withdrawn from consideration as drawn to a non-elected invention. Claims 1-9 have been subjected to a further restriction requirement. New Claims 14, 15 were added and as outlined above, Claims 1 and 15 amended. Claims 1-15 remain pending in this application, however, only Claims 1, 2, 14 and 15 are currently under consideration.

The amendment to Claim 1 is fully supported in the specification as originally filed. In particular, support can be found on page 6, beginning line 6 of the specification. Claim 15 was amended to correct another typographical error, again pointed out by the Examiner.

Objections

The disclosure was objected to because of informalities including apparent inconsistencies between the structure of claim 3-10 and the abstract and that on page 5, lines 105 and Examples 5-6. With this Paper, the Abstract of the Disclosure has been amended to correct a typographical error where the density is incorrectly identified as 4 grams per cubic centimeter. The correct density should be 0.4 grams per cubic centimeter. As far as the other portions identified in the Office Action, the language in the specification on page 15, lines 1-5 (not page 5 as indicated in the Office Action) and Examples 5-6 is correct and does not require amendment. With this Paper, the Abstract is presented on a separate page from the amendments to the Specification. Reconsideration of the objections is respectfully requested.

Claim 15 was objected to because of a formality: on line 1 the word “glycerol” should be “glycerol”. Claim 15 has been amended to provide the correct spelling.

Claim 15 was objected to and amended as per the Examiner’s suggestion.

Rejections

Indefiniteness

Claims 1-2 and 14-15 stand rejected under 35 U.S.C 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Independent claim 1 and dependent claim 15 have been amended to more clearly recite the claimed invention. In view of the amendments to claim 1, from which claims 2, 14 and 15 depend from and the amendment to Claim 15, it is respectfully submitted that the Examiner's rejections have been overcome.

Claims 14-15 stand rejected under 35 U.S.C 112,, first paragraph, as failing to comply with the written description requirement. Both of these claims depend from Claim 1, which has been amended to comply with the written description requirement. Additionally, Claim 15 has also been amended. In view of the amendments to claim 1 and 15, it is respectfully submitted that the Examiner's rejections have been overcome.

Claims 1-2 and 14-15 stand rejected under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. In view of the amendments presented above, it is respectfully submitted that the Examiner's rejections have been overcome.

As asserted by the Office Action, the Examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. While the analysis and conclusion of a lack of enablement are based on the factors discussed in MPEP 2164.01(a) and the evidence as a whole, it is not necessary to discuss each factor in the written rejection.

The Examiner asks the question "First, what is the claimed invention?" and further states "As set forth in claim 1, the invention is an absorbent tampon comprising an absorbent structure consisting essentially of lyocell fibers. Second, the terminology "consisting essentially of" is interpreted to limit the scope of the absorbent structure to the specified fibers and that which do not materially affect the basic and novel characteristics of such absorbent structure. However, and third, the instant application does not set forth what such "basic and novel characteristic(s)" to be so affected are considered to be, i.e. the application only discloses specific densities and absorbencies of a tampon of specific dimensions consisting of lyocell fibers not thee "basic and novel characteristics" of an absorbent structure as claimed." Office Action, page 5.

Applicant respectfully disagrees with the Office's characterization of the elements of Claim 1. The amended claim reads as follows: An absorbent tampon comprising an absorbent structure, said absorbent structure comprising absorbent material consisting essentially of lyocell fibers, the tampon having a density of about 0.3 to about 0.5 g/cm³ and a Syngyna Absorbency of at least about 4.4 g/g.

The claimed invention is "An absorbent tampon comprising an absorbent structure." The transition phrase "comprising" makes clear that the claimed invention relates to an absorbent tampon that includes, contains, or is characterized by an absorbent structure and is inclusive or open ended and does not exclude additional, unrecited elements or method steps. These elements may include such things as a withdrawal string, a liquid-permeable cover, surfactants and other material treatments or coatings, etc. While the instant specification does not identify these additional elements, two patents have been incorporated by reference: US 5679369 (Additives to Tampons) and US 6310269 (Tampon Especially for Feminine Hygiene and a Process and Apparatus for Producing This). US 5679369 discloses tampons having absorbent cores, covering, withdrawal strings. (Col. 10, lns., 43-45; Col. 12, lns. 31-33; Col. 15, lns. 18-20; Col. 16, lns. 22-24.) US 6310269 discloses tampons having a central fiber core and a withdrawal string. (Col. 1, lns. 44-57.) Since it has been disclosed that an absorbent tampon can have additional elements, Applicant believes that the claim language is correct and respectfully requests reconsideration of this rejection.

Claim 1 further recites "said absorbent structure comprising absorbent material consisting essentially of lyocell fibers." The absorbent structure comprises absorbent material. By then using the transition phrase "consisting essentially of", the absorbent material of the absorbent structure is further limited to lyocell fibers and those materials or steps that do not materially affect the basic and novel characteristic(s) of the absorbent structure. As per MPEP 2111.03, further defining the scope of the claim by use of this transition phrase is acceptable. As disclosed in the instant specification materials such other fibers (page 6-7) and additives such as those on page 7-10 and in US 5679369, can be added to tampons include such items as inhibitory agents can be added without affecting the characteristics of the absorbent structure. In keeping with the claim language, the additional material does not affect the properties of lyocell fibers. Thus, as defined by the claim language, an absorbent structure having these additional materials would fall within the scope of the claim. Applicant believes that the

specification is, in fact, enabling as required under §112, first paragraph, as one skilled in the art would be able to make this invention. Additionally, Applicant believes that the invention has been fully described and claimed as required under §112, second paragraph. In view of the amendments to the above described claim, it is respectfully submitted that the Examiner's rejections have been overcome. For these reasons, Applicant respectfully requests reconsideration.

Claim Language Interpretation

Applicant thanks the Examiner for her clarification relating to the FDA test on page of the Office Action.

Anticipation Rejection

Claim 1-2 stand rejected under 35 U.S.C. 102(b) as being anticipated by Woodings et al PCT '133 (WO 98/10133) ("Woodings"). (Office Action, page 6.) For the reasons set forth below the rejection, respectfully is traversed.

The present invention has been described previously.

Woodings purports to disclose increasing the absorbency of lyocell fibre by scouring the fibre in hot aqueous alkali, preferably in loose state, for example in 1-6% sodium hydroxide at 90-125° C for 1-10 hours. (Abstract.)

Claim 1 has been amended further limiting the claim to require that the absorbent structure comprising absorbent material consists essentially of hydrothermally treated lyocell fibers.

In view of the amendments to Claim 1, from which claim 2 depends from, it is respectfully submitted that the Examiner's rejections have been overcome.

Obviousness Rejection

Claims 14-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Woodings '133 in view of Huber et al '598. (Office Action, page 9.)

Woodings has been described previously.

Huber purports to disclose the treatment of cellulosic fibre, especially fibre produced by the viscose process by stable aqueous emulsions of an ester of a polyhydric aliphatic alcohol and a fatty acid, in particular a mixture of GML and GDL.

Claim 1 has been amended further limiting the claim to require that the absorbent structure comprising absorbent material consists essentially of hydrothermally treated lyocell fibers. Woodings does not disclose hydrothermally treated lyocell fibers. Neither does Huber. Therefore, combining Woodings and Huber would not result in the invention of Claim 1. Since Claims 14 and 15 depend from Claim 1, it is respectfully submitted that the Examiner's rejections have been overcome.

Applicant believes that the foregoing presents a full and complete response to the outstanding Office Action. Applicant looks forward to an early notice of allowance for this application.

Respectfully submitted,

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Dated: January 22, 2008